IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

WP(C).No. 26930 of 2007(E)

AGAINST THE ORDER DATED 30/07/2007 IN IA.998/07 IN OS.179/1999 of MUNSIFF COURT, PALA
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PETITIONERS: PLAINTIFFS:
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1. **MARIYAKUTTY,W/O. THOMMAN, AGED 72 YEARS, KIZHAKKEKKARAMYALIL, POOVAKKULAM KARA, VELIYANOOR VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT.**

2. **JOY, S/O. THOMMAN, AGED 39 YEARS, DO..DO**

3. **CHINNAMMA,W/O. GEORGE JOHN, AGED 46 YEARS, VADAKKEKARA PUTHINPURAYIL, MANNATHOOR KARA, THIRUMARADI VILLAGE,MOOVATTUPUZHA TALUK.**

4. **SARAKUTTY,W/O. ELIAS,AGED 44 YEARS, VETTIKATTIL, MANNATHOOR KARA, RAMAMANGALAM VILLAGE, MOOVATTUPUZHA TALUK.**

5. **SUNNY, AGED 42 YEARS,KIZHAKKEKARA, MYALIL HOUSE,POOVAKKUAM KARA,VELIYANNOOR VILLAGE, MEENACHIL TALUK.**

6. **JAMES, AGED 38 YEARS, DO..DO...**

7. **SAJU, S/O. THOMMAN, AGED 35 YEARS, DO..DO..,.**

8. **ELIYAMMA, W/O. TANKACHAN, AGED 43 YEARS, PANTHAPURATHU HOUSE,VENGALLOOR KARA, PURAPPUZHA VILLAGE, THODUPUZHA TALUK.**

BY ADV. SRI.P.M.JOSHI
SMT.JINU JOHN

..2/-

RESPONDENTS: DEFENDANTS:
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1. **K.MARY, KAKKUZHIYIL HOUSE,POOVAKKULAM KARA, VELIYANNOOR VILLAGE, MEENACHIL TALUK.**

2. **BEENA,D/O. MARY, KAKKUZHIYIL HOUSE, POOVAKKULAM KARA, VELIYANNOOR VILLAGE, MEENACHIL TALUK.**

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

M.N.KRISHNAN, J

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W.P.(C) No.26930 OF 2007

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Dated this the 10th day of September 2007

JUDGMENT

This writ petition is field to set aside the order of the Munsiff's Court, Pala in I.A.No.998 of 2007 in O.S.No.179 of 1999. By the said order the court below dismissed the application for issuance of a new commission. Learned counsel for the writ petitioners submits before me that the court has earlier ordered the first report and plan to be remitted to the Commissioner for the purpose of identifying the property with respect to the title deeds with the assistance of a Taluk Surveyor. Thereafter it is submitted that an objection is filed to the Commissioner's report whereby there is also request made to the court to set aside the previous Commissioner's report as it is inadequate. Petitioners also filed another application for issuance of a new Commission. By the impugned order the court held that there is no prayer for setting aside the existing commission report and plan and therefore dismissed the application. The approach of the court cannot be considered to be erroneous. This court has held that the issuance of a number of commissions is a practice which is to be deprecated and that it will

unnecessarily create confusion for a proper determination of the case. But it has to be remembered that the suit is one for declaration and the plan and report are absolutely necessary for the proper disposal of the case. Even the Commissioner, who is appointed had not complied with the directions of the court, but expressed his inability to do the demarcation even with the assistance of a Taluk Surveyor. So there is real grievance for the writ petitioners. It is true that they did not make a separate application for setting aside the Commissioner's plan and report. But, if the case is proceeded with the present plan and report, it may not be possible to determine the real controversy between the parties.

Therefore, I dispose of the writ petition granting permission to the writ petitioners to move an application for setting aside the Commissioner's report and plan with a prayer to appoint a new Commissioner and the court below shall consider it in accordance with law, after hearing both sides and pass appropriate orders. In order to enable the petitioners to file such an application, the court below is directed to remove the case from the list which is posed to 12.9.2007.

M.N.KRISHNAN, JUDGE

Cdp/-